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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/878,034	06/08/2001	Daniel McTeigue	MCP-0279	1620

27777 7590 09/20/2002
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EXAMINER

PULLIAM, AMY E

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 09/20/2002

4

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/878,034

Applicant(s)

MCTEIGUE ET AL.

Examiner

Amy E Pulliam

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Receipt of Papers

Receipt is acknowledged of the Information Disclosure Statement, and the Supplemental Information Disclosure Statement, received by the Office June 8, 2001, and January 23, 2002, respectively.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 6, 9, 11, 16, 18, 19, and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The above listed claims state "an insoluble film forming polymer." Insoluble in what? Water? Oil? The examiner has interpreted this as a water insoluble film forming polymer, however appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Canadian Application 2,068,366 to Morella *et al.*. Morella *et al.* disclose a taste masked free flowing powder including microcapsules, wherein each microcapsule includes an effective amount of a core element including at least one pharmaceutically active ingredient, a substantially smooth and continuous microcapsule coating on the core element formed from a coating composition including a water insoluble polymer (p 25, claim 1). Morella *et al.* teach that this polymer is ethyl cellulose (p 25, claim 7). Furthermore, Morella *et al.* teach that the active agent can be a non-steroidal anti-inflammatory agent (p 25, claim 5). Morella *et al.* also teach the tasted masked free flowing powder composition discussed above, wherein the coating composition includes a water insoluble polymer (ethyl cellulose) and a polymeric component which can be an enteric polymer (p 26, claim 9). In their disclosure, Morella *et al.* teach that enteric polymers include cellulose acetate phthalate, hydroxypropyl methyl cellulose phthalate, hydroxypropyl methyl cellulose acetate succinate, and others (p 9, l 30-38). Additionally, Morella *et al.* teach that the coating comprises a water insoluble polymer, and one or more of an enteric polymer, an acid-soluble polymer, and a partially water soluble polymer (p 26, claim 9). The reference also allows for the inclusion of excipients (p 11, l 23-32). Morella *et al.* also teach that the taste masked free flowing powder can be in the form of a chewable tablet (p 29, claim 28). Therefore, the teachings of Morella *et al.* anticipate the teachings of the instant claims.

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Correspondence


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy E Pulliam whose telephone number is 703-308-4710. The examiner can normally be reached on Mon-Thurs 7:30-5:00, Alternate Fri 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 703-308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3592 for regular communications and 703-305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

Amy E. Pulliam
Patent Examiner

aep
September 18, 2002


THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
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